



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 16, 1998

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR98-2705

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119626.

The City of Dallas (the "city") received a request for five categories of documents related to the requestor's grievance hearing. You inform us that you will release all of the requested information except for the memorandum written by Janice Moss to Sam Lindsay on April 8, 1998. You claim that the memorandum is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the requested memorandum may be withheld as attorney work product under section 552.111. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 at 4 (1996).

You indicate that the information at issue was gathered or prepared in anticipation of litigation. You explain that the memorandum was created to address the issues in the

current grievance proceedings and any future litigation filed by the requestor. We find that you have demonstrated in this case that the documents at issue were created in anticipation of litigation. You have established the applicability of both parts of the first prong of the work product test.

The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. You argue that the memorandum consists of and tends to reveal the assistant city attorney's mental processes, conclusions, and theories relating to the grievance proceeding. Based on your arguments, we find that you have established the second prong of the work product test. You may withhold the marked information from the memorandum as attorney work product under section 552.111.

However, this office has stated that the work product privilege under section 552.111 does not extend to "facts an attorney may acquire." Open Records Decision No. 647 (1996) at 4 (citing *Owens-Corning Fiberglass v. Caldwell*, 818 S.W.2d 749, 750 n.2 (Tex. 1991)). Moreover, the privilege does not protect memoranda prepared by an attorney that contain only a "neutral recital" of facts. See *Leede Oil & Gas, Inc. v. McCorkle*, 789 S.W.2d 686, 687 (Tex. App.--Houston [1st Dist.] 1990, no writ); see generally *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (request for district attorney's entire file too broad). The remaining information in the memorandum is nothing more than the basic facts of the case.

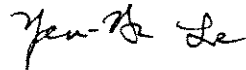
Section 552.107 is also not implicated. Section 552.107(1) excepts from public disclosure information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. Open Records Decision No. 574 (1990). Basically factual information is not protected. *Id.* The remaining information in the memorandum neither reflects confidential communications from the client to the attorney nor reveals the attorney's legal advice or opinions.

Lastly, you may not withhold the attachments to the memorandum under either section 552.107 or 552.111. The attachments reflect neither confidential communications from the client to the attorney nor the attorney's legal advice or opinions; therefore, section 552.107 does not except the information from public disclosure. Moreover, the attachments are not excepted from public disclosure as attorney work product under section 552.111 because they were neither created for trial or in anticipation of litigation nor do they consist of or tend to reveal an attorney's mental processes, conclusions, and legal theories.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 119626

Enclosures: Submitted documents

cc: Mr. David Jakaboski
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(w/o enclosures)